

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

S-636

DATE OF INTRODUCTION:

January 8, 2002

SPONSOR:

Assemblywoman Coleman

DATE OF RECOMMENDATION:

February 26, 2002

IDENTICAL BILL:

A-580

COMMITTEE:

Senate Economic Growth, Agriculture and Tourism

DESCRIPTION:

The Bill provides for a 3% sales tax rate for “retail sales,” sales of food and drink and admission charges at places of amusement in urban enterprise zones.

ANALYSIS:

This Bill is proposed to amend the Urban Enterprise Zone Act, N.J.S.A. 52:27H-60, et. seq., to provide for a 3% sales tax rate for “retail sales,” sales of food and drink and admission charges at places of amusement in urban enterprise zones. It further allows the 3% rate to continue after the end of the 20-year period of a zone designation so long as the place of amusement continues in operation at the same location. The Bill prohibits a “sexually orientated business” from being a qualified place of amusement.

The rationale behind the Bill is unclear. Presumably it is to encourage consumers to visit a place of amusement located within the urban enterprise zone by offering a 3% reduction in admission charges, thereby inducing buyers to make more purchases than they would if the sales tax rate was 6%. But it is doubtful that a consumer would be enticed into an urban enterprise zone by the prospect of reduced sales tax on an admission charge and then make substantially more purchases simply because the sales tax rate is 3%.

The loss of revenue to the State would be substantial because the 3% sales tax collected would be remitted to the municipality in which the urban enterprise zone is located and not to the State’s General Fund. Thus, the State would lose the entire 6% sales tax that is currently collected on these items.

Currently, only “qualified businesses” located within the urban enterprise zone are eligible to collect sales tax at the rate of 3%. To become qualified, the business must meet certain criteria, such as creating new employment in the zone. Since this proposal would give the 3% benefit to all places of amusement without any qualifying criteria (other than being located within a zone), the bill is inconsistent with current urban enterprise zone policies and programs. The easier it is for certain businesses to qualify for charging 3% sales tax, the more that competitors located outside a zone will assert

that the Urban Enterprise Zone program gives an unfair advantage to businesses in the zone. The Bill could also result in a trend toward more “automatic” qualification for urban enterprise zone benefits. Further, the inconsistencies between the Bill’s 3% provisions and the regular 3% requirements will create confusion among businesses in zones and among customers.

The adoption of this proposal creates a potential federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-state for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Further, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zone Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions within the zones. This disparate treatment of certain transactions violates this doctrine. Adding more types of sales under the purview of the 3% sales tax rate would exacerbate the already tenuous foundation upon which the Act is based.

Finally, the Bill creates a complex problem in the administration of the program. Determining whether a sale occurs at the qualifying location in the zone will be difficult. For instance, a ticket agent located within a qualifying place of amusement may assert that the agent may charge 3% sales tax for a ticket sold at a booth within the zone, even though the event will be outside the zone. In addition, a vendor that is located and that takes an order within a qualifying place of amusement may assert that it can charge 3% sales tax on mail-order sales or sales of products delivered from an outside warehouse or another store.

RECOMMENDATION:

The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 8

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COMMISSION MEMBERS ABSTAINING: 0

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